the right to grant a waiver to cases of default, foreclosure, or financial distress.

Sandler submits that the Commission should consider waivers of the three-year holding rule on a case-by-case basis. There are, however, certain situations in which a waiver would clearly be in the public interest.

The Commission should be particularly receptive to waivers involving the acquisition of contiguous systems. Such an acquisition would enable an operator to achieve economies of scale which would lead to _enhanced_ service for both sets of subscribers. The public interest would also clearly be served when a buyer is willing to invest quickly and significantly to improve cable services when such investment does not involve unreasonably raising rates. Section 617 should not be used to discourage investors willing to make substantial improvements to a system without imposing unreasonable rate increases on subscribers.[21/]

The specific exception for "any sale required by law" in Section 617(c)(1) exempts from the holding period those transfers into bankruptcy or receivership which are covered generally by Section 73.3541 of the Commission's broadcast rules on involuntary _pro forma_ assignments and transfers. Under the broadcast rules and policies, however, a sale from

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21/ Exercise of the Commission's waiver authority should also take into consideration the fact that unreasonable rate increases, if they do occur, can be eliminated pursuant to Section 623 of the 1992 Cable Act.

a receiver or trustee to a third party for the benefit of creditors, or the acquisition for sale or subsequent sale to a third party by the creditor itself, constitutes a "substantial" change in control that normally requires a "long form" application. There is no reason at all, however, to subject these transactions to the holding period in Section 617. Sales out of bankruptcy or receivership and sales to, by or for the benefit of creditors present no prospect of "profiteering." Moving a cable system out of the hands of trustees or creditors, who would likely have no system operation experience, and into the hands of a normal operator should only benefit subscribers. Unless creditors are certain that they will be able to divest themselves of cable properties acquired pursuant to foreclosure or similar legal process, they will be reluctant to lend funds to the cable industry.

While other waiver decisions regarding financial distress should be made on a case-by-case basis, the unavailability of capital sufficient to maintain an adequate level of cable television service should be a good cause for waiver,[22/] if accompanied by the demonstrated ability of the transferee to invest in the cable plant. In addition, a waiver applicant that demonstrates the transfer of a system will not lead to increased prices or a diminution in service warrants the granting of a waiver. Moreover, the approval

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22/ NPRM at ¶ 19.

of a franchising authority should be presumptive evidence that this waiver condition has been satisfied.[23/]

Sandler also supports the concept of a "contingent" waiver, issued by the Commission, which would be conditional on securing the franchising authority's approval of the transfer, when required. A cable operator should have the discretion to first submit a waiver petition to the franchising authority and then to the Commission, *vice versa*, or, where appropriate, to the franchising authority and the Commission simultaneously. If the Commission approves the petition before the franchising authority, it may grant it on a contingent basis.

23/ Congress specifically exempted from the holding period "any sale required by . . . any act of . . . any franchising authority," acknowledging implicitly that the purpose of the holding period is not to tie the hands of local franchising authorities. Franchising authorities are likely to be in the best position to assess whether a "substantial" change of control sought within the three-year holding period would have any adverse impact on cable rates or services. Thus, where a franchising authority supports a proposed "substantial" change of control within the three-year holding period, the Commission should be provided with a strong presumption in favor of a grant of the waiver.

CONCLUSION

For the foregoing reasons, the Commission should adopt rules and policies in accordance with the proposals contained in these comments.

Respectfully submitted,

By: ______________________

Brenda Fox
Peter H. Feinberg
Michael Pierce
DOW, LOHNES & ALBERTSON
1255 23rd Street, N.W.
Suite 500
Washington, D.C. 20037

Its Attorneys